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7 MARKEL AMERICA INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 CV 07

5749

11 MARKEL AMERICAN INSURANCE COMPANY,

Case No.

12 Plaintiff,

COMPLAINT FOR DAMAGES FOR:

13 vs.

1. Strict Products Liability
2. Breach of Warranty
3. General Negligence

14 PACIFIC ASIAN ENTERPRISES, INC.; a California  
corporation; LEVITON MANUFACTURING CO.,  
15 INC., a Delaware corporation; HUBBELL  
INCORPORATED, a Connecticut corporation; and,  
16 DOES 1 - 100, inclusive,

DEMAND FOR JURY TRIAL

17 Defendants

18  
19 COMES NOW plaintiff MARKEL AMERICAN INSURANCE COMPANY and alleges as  
20 to defendants, and each of them, as follows:

21 JURISDICTION

22 1. Jurisdiction over this matter is proper in this court under 28 U.S.C. §1332 as there  
23 is complete diversity of citizenship between plaintiff and defendants in this action, and the amount in  
24 controversy exceeds \$75,000.

25 VENUE

26 2. Venue for this diversity action is proper in this District under 28 U.S.C. §1391(a) on  
27 the grounds that (1) for purposes of venue, defendant corporations are all deemed to reside in this  
28 judicial district pursuant to 28 U.S.C. §1391(c).

**PARTIES**

3. At all times relevant herein, plaintiff MARKEL AMERICAN INSURANCE COMPANY (hereinafter, "**MARKEL**") was and is a Virginia corporation with a principal place of business in Wisconsin and is admitted to do and doing business of insurance in the State of California.

4. Plaintiff is informed and believes that, at all times relevant herein, defendant PACIFIC ASIAN ENTERPRISES, INC. (hereinafter, "**PAE**"), was and is a California corporation licensed to do an doing business in the State of California, including the Northern District of California, with a principal place of business in Dana Point, California.

5. Plaintiff is informed and believes that, at all times relevant herein, defendant LEVITON MANUFACTURING CO., INC. (hereinafter, "**LEVITON**") was and is a Delaware corporation with a principal place of business in the State of New York which is licensed to do an doing business in the State of California, including the Northern District of California.

6. Plaintiff is informed and believes that, at all times relevant herein, defendant HUBBELL INCORPORATED, doing business in California, including the Northern District of California, as Harvey Hubbell Incorporated (hereinafter, "**HUBBELL**") was and is a Connecticut corporation with a principal place of business in the State of Connecticut which is licensed to do an doing business in the State of California including the Northern District of California.

7. Plaintiff is unaware and ignorant of the true names and domicile of the defendants identified as DOES 1-100, inclusive, and therefore sues said defendants by such fictitious names and prays for leave to amend this complaint when the true names and capacities of said fictitiously named defendants have been ascertained.

8. Plaintiff is informed and believes and thereon alleges that each of the defendants is and at all times herein was the agent, principal, undisclosed agent, undisclosed principal, associate, employee and/or representative of the other(s) or in some other way responsible for the damages suffered by plaintiff and plaintiff will seek leave to amend this complaint when such relationships are ascertained.

**GENERAL ALLEGATIONS**

9. At all relevant times herein plaintiff **MARKEL** issued to its insured, Ron Montague, a policy of insurance called the Jackline Policy, policy number JL0000045-2, for the policy period of

1 September 19, 2005, to September 19, 2006, on a 2003 47' Nordhavn trawler, hull number  
2 PAI470111003 named *Boundless Grace*.

3 10. Plaintiff is informed and believes that the *Boundless Grace* was designed,  
4 manufactured, distributed and sold by PAE and incorporated the work, materials and products of  
5 defendants LEVITON, HUBBELL and DOES 1 - 100, inclusive.

6 11. Plaintiff is further informed and believes that its insured purchased the *Boundless*  
7 *Grace* directly from defendant PAE which delivered the vessel to him in or about January 2004, in the  
8 State of Florida. Unknown to plaintiff's insured, at the time the vessel was delivered, the vessel and  
9 certain key components were defective, deficient and/or were otherwise not fit for the purpose intended.

10 12. On or about November 14, 2005, as a direct, foreseeable and proximate result of the  
11 defects, deficiencies and poor workmanship of the work, materials and products of defendants, and each  
12 of them, the *Boundless Grace* was severely damaged in an engine room fire including, but not limited  
13 to heat, fire, smoke, and water damage to its machinery space, generator, engine and mechanical  
14 systems, cabin, wheelhouse, electrical system, fuel system, plumbing system, insulation, fittings,  
15 finishes, furnishings and appliances, as well as personal property. In addition, various dock fees and  
16 emergency repair and clean up costs were necessarily incurred to protect the boat.

17 13. As a direct and proximate result of the fire and the damage caused to the *Boundless*  
18 *Grace*, plaintiff was obligated to pay substantial sums to or on behalf of its insured for the protection,  
19 repair, and loss of use of the vessel in an amount according to proof, but not less than \$268,900.

20 14. Plaintiff has performed all acts in compliance with the terms and conditions of its  
21 policy with its named insured for the loss to *Boundless Grace*, and by reason thereof, has become  
22 subrogated to the rights of its insureds to recovery the amounts paid and incurred as a proximate result  
23 the loss and damage to the vessel.

24  
25 **FIRST CLAIM FOR RELIEF**  
**(Strict Liability)**

26 15. Plaintiff realleges and incorporates by reference as though fully set forth herein, the  
27 allegation of paragraphs 1 through 13, inclusive, of this Complaint.

28 16. Plaintiff is informed and believes that defendant PAE, and DOES 1 - 50, designed,

1 manufactured, assembled, distributed, and sold the 2003 47 foot Nordhavn trawler known as *Boundless*  
 2 *Grace* to plaintiff's insured, Ron Montague.

3 17. Plaintiff is informed and believes that defendants **Leviton, Hubbell**, and DOES 51 -  
 4 70, designed, manufactured, assembled, distributed, and sold electrical components supplied to  
 5 defendant **PAE** for use and installation on *Boundless Grace*.

6 18. Plaintiff is informed and believes that defendants DOES 71 - 90, designed,  
 7 manufactured, assembled, distributed, and sold other component products supplied to defendant **PAE**  
 8 for use and installation on *Boundless Grace*.

9 19. Plaintiff is informed and believes that defendants, and each of them, designed,  
 10 manufactured, distributed and sold products to the general public which defendants, and each of them,  
 11 knew would be purchased and used without inspection for defects by ordinary consumers. At all times  
 12 relevant to this action, defendants, and each of them, exercised control over all aspects of the design,  
 13 approval, manufacture and inspection of the products and materials delivered and incorporated into the  
 14 vessel owned by plaintiff's insured. The product(s) of each defendant was defective when it left the  
 15 control of each defendant. At the time of the loss, the product was being used in a manner intended by  
 16 or reasonably foreseeable to defendants, and each of them.

17 20. Plaintiff is informed and believes that the defect in defendants' product, and each of  
 18 them, were not known to and could not have been reasonably discovered by its insured. Plaintiff's  
 19 insured was the owner and user of the product at the time of the fire.

20 21. As a direct and proximate result of the failure of defendants' product(s), and each of  
 21 them, plaintiff's insured suffered substantial injury and damage to the *Boundless Grace* and plaintiff has  
 22 been damaged by reason of its obligation to pay and payment of substantial sums to or on behalf of its  
 23 insured for the protection, repair and loss of use of the *Boundless Grace* in an amount in excess of  
 24 \$75,000, exclusive of interest and costs, to be determined at trial.

25 **WHEREFORE**, Plaintiff prays for judgement as hereinafter set forth.

26  
 27 **SECOND CLAIM FOR RELIEF**  
**(Breach of Warranty)**

28 22. Plaintiff realleges and incorporates by reference as though fully set forth herein, the



1 allegation of paragraphs 1 through 20, inclusive, of this Complaint.

2 23. Plaintiff is informed and believes that at the time their respective products were sold  
3 or transferred, defendants, and each of them, expressly and impliedly represented and warranted that the  
4 product(s), services and materials provided would be of good quality and workmanship, free from  
5 defects, were of merchantable quality fit for the particular use intended and would conform to the  
6 standards of products of that nature.

7 24. Plaintiff is informed and believes that at no time prior to the fire on or about  
8 November 15, 2005, was its insured aware of any failure of the vessel or its component parts nor of any  
9 defect or deficiency in said products.

10 25. Unknown to plaintiff's insured, the vessel and component parts designed,  
11 manufactured, sold and distributed by defendants, and each of them, were, in fact, dangerous, defective  
12 and failed to be of the quality represented and warranted by defendants, and each of them.

13 26. As a direct, proximate and foreseeable result of the breach of express and implied  
14 warranty(ies) in the products designed, manufactured, sold and distributed by defendants, and each of  
15 them, plaintiff and its insured have suffered injury and damage in an amount according to proof at trial  
16 in excess of \$75,000.

17 27. Following discovery of the breach of warranty in the products of defendants, and each  
18 of them, plaintiff gave notice to defendants of the breach and of the damages caused by the breach of  
19 said warranties; however, defendants have failed and refused and continue to fail and refuse to cure the  
20 defects, deficiencies and resultant damages to the *Boundless Grace*.

21 **WHEREFORE**, Plaintiff prays for judgement as hereinafter set forth.

22 **THIRD CLAIM FOR RELIEF**  
23 **(Negligence)**

24 28. Plaintiff realleges and incorporates by reference as though fully set forth herein, the  
25 allegation of paragraphs 1 through 26, inclusive, of this Complaint.

26 29. Defendants, and each of them, owed a duty of care in the design, manufacture,  
27 distribution and sale of goods, services and products, to conduct their activities so as to avoid harm to  
28 the persons and property of others including, but not limited to plaintiff's insured.

30. Defendants, and each of them, breached their duty of care to plaintiff's insured by failing to ensure that the products, services and materials provided for the *Boundless Grace* were of good workmanship and materials, free from defects and fit for the purpose intended.

31. As a direct and proximate result of the breach of duty by defendants, and each of them, plaintiff has been harmed due to the fire which damaged the vessel of its insured in an amount according to proof in excess of \$75,000.

**PRAYER FOR RELIEF**

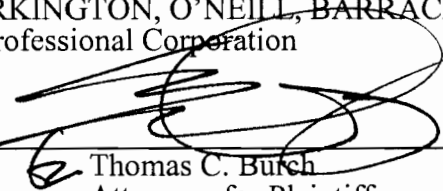
**WEREFORE**, plaintiff prays for judgment against defendants Pacific Asian Enterprises, Inc., Leviton Manufacturing Co., Inc., Hubbell Incorporated, and DOES 1 - 100, inclusive, as follows:

1. General damages in the amount of \$288,917.57;
2. Prejudgment interest at the legal rate;
3. Costs of Suit; and,
4. For such other and further relief as the Court may deem just and proper.

DATED: November 12, 2007

TARKINGTON, O'NEILL, BARRACK & CHONG  
A Professional Corporation

By

  
Thomas C. Burch  
Attorneys for Plaintiff  
Markel American Insurance Company

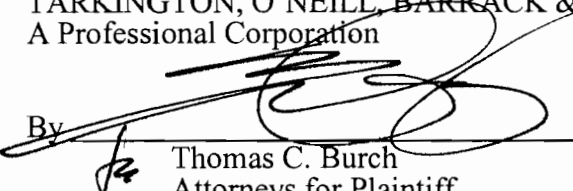
**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure on all issues in this action.

DATED: November 12, 2007

TARKINGTON, O'NEILL, BARRACK & CHONG  
A Professional Corporation

By

  
Thomas C. Burch  
Attorneys for Plaintiff  
Markel American Insurance Company